Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

REPLY COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

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July 17, 2017

EXECUTIVE SUMMARY

The ample record compiled in this proceeding confirms the need to clear regulatory impediments to timely infrastructure deployment in order to meet consumer demand and maintain American leadership in all things mobile. While the Commission and some states and localities are to be commended for their efforts to date, the record shows more work is needed: siting delays, excessive fees, needless environmental reviews, and other regulatory barriers all combine to increase costs and slow rollout. This proceeding affords the Commission the opportunity to set polices that will address these roadblocks and lead to even greater investment, without compromising safe and responsible buildout.

To address deployment delays, the record supports Commission action to: (i) implement a deemed granted remedy for shot clock violations; (ii) shorten the existing Section 332 shot clocks; and (iii) clarify that the shot clocks apply to all aspects of the wireless siting process and are not extended by fee disputes, "batched" applications, and moratoria. The record further confirms that the Commission has ample legal authority to adopt a deemed granted remedy—whether in the form of an irrebuttable presumption, lapse of local government authority, or preemption—and its authority to interpret and clarify its shot clocks is well established.

To address other state and local siting barriers, the record supports a Commission declaratory ruling clarifying that: (i) Section 253 bars regulations and legal requirements that materially inhibit or impede telecommunications infrastructure because they create an effective prohibition of telecommunications services; (ii) the judicially-created substantial gap test under Section 332 is not workable in the context of small wireless facilities that add capacity; (iii) all fees charged by localities with regard to wireless siting must be nondiscriminatory and cost-based; (iv) moratoria and requirements imposed on ROW applicants not related to ROW management are prohibited; (v) aesthetics should not play a role for wireless ROW deployments if not applicable to non-wireless deployments; and (vi) access to ROWs and associated poles implicates local authorities' regulatory authority and is subject to Sections 253 and 332. The record also confirms Commission authority to issue a declaratory ruling, and there is no merit to claims that Section 253(d) constrains FCC action or that Section 253 does not apply to wireless.

To address environmental impediments, the record supports (i) eliminating the need for most floodplain EAs; (ii) expanding the NEPA exclusion for small wireless support structures; and (iii) establishing shot clocks to resolve environmental delays and disputes. The record also supports: (i) expanding existing NHPA exclusions for pole replacements, facilities in ROWs and industrial/commercial areas, and collocations (including small wireless deployments); and (ii) reforming the Tribal review process and resolving the treatment of Twilight Towers, consistent with the joint filings by WIA and CTIA.

To address pole attachment delays, the record supports Commission action to improve the make-ready process through "one-touch" make-ready procedures and ensuring timely activation of electrical service. The record also supports adoption of a 180-day shot clock to resolve pole attachment complaints.

By taking these steps, the Commission will better enable America's wireless companies and infrastructure providers to accelerate network builds and deliver improved wireless voice and broadband communications to consumers.

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The Wireless Infrastructure Association ("WIA")[1] respectfully submits these reply comments in response to the *Notices of Proposed Rulemaking* and *Notices of Inquiry* issued in the captioned proceedings.[2]

INTRODUCTION

The extensive record compiled to date demonstrates that significant barriers to wireless infrastructure deployment persist. These barriers include needless delays and moratoria, excessive fees, discriminatory treatment, discretionary denials, and environmental and other regulatory red tape that together thwart the timely rollout of new and advance services. They impact all forms of wireless deployments, ranging from capacity-enhancing small cells and

[1] WIA is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. Its members include carriers, infrastructure providers, and professional services firms.

[2] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017) ("*Wireless NPRM/NOI*"); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017).

distributed antenna systems ("DAS"), to collocations, equipment upgrades, and new poles and towers.

A broad spectrum of commenters—including carriers, infrastructure providers, trade associations, business interests, and public interest groups—agree immediate action is needed to eliminate these barriers. While some states and localities are to be commended for their efforts to address these challenges, progress is too slow and is not happening everywhere. Commission action is needed now to ensure the benefits of advanced wireless services reach all Americans, and help tear down the digital divide.

DISCUSSION

I. THE RECORD CONFIRMS THE NEED TO REMOVE BARRIERS TO WIRELESS INFRASTRUCTURE DEPLOYMENT.

It is uncontested that demand for wireless services is skyrocketing. The record compiled to date in these proceedings demonstrates the importance of wireless services,[3] particularly in emergency situations.[4] Importantly, the significant need for wireless was touted not only by

[3] *See, e.g.*, Comments of the Wireless Infrastructure Association, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 2-4 (Jun. 15, 2017) ("WIA Comments"); Comments of 5G Americas, WT Dkt. No. 17-79, at 1-5 (Jun. 12, 2017); Comments of AT&T, WT Dkt. No. 17-79, at 1-2, 4-6 (Jun. 15, 2017) ("AT&T Comments"); Comments of CTIA, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 4-6 (Jun. 15, 2017) ("CTIA Comments"); Comments of Mobilitie, LLC, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 1 (Jun. 15, 2017) ("Mobilitie Comments"); Comments of T-Mobile USA, Inc., WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 2-3, 5-6 (Jun. 15, 2017) ("T-Mobile Comments"); Comments of Verizon, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 3-4 (Jun. 15, 2017) ("Verizon Comments").

[4] The Delaware Department of Transportation estimated that 70% of 911 calls in some Delaware localities come from wireless phones. Comments of the Delaware Department of Transportation at 1 ("Delaware DOT Comments"), *attached to* Comments of American Association of State Highway and Transportation Officials ("AASHTO") as Att. 1, WT Dkt No. 17-79 (Jun. 15, 2017).

industry but also by various state agencies.[5] But despite the recognized importance of, and consumer demand for, wireless services, the record demonstrates that numerous barriers remain to the deployment of infrastructure needed to provide these services. WIA documented these barriers in response to the *2016 Streamlining Public Notice*,[6] and again in its initial comments in these proceedings.[7] As highlighted below, numerous commenters continue to identify significant barriers to wireless infrastructure deployment.

A. Moratoria and Other Delays Stall Wireless Deployment.

The record demonstrates that various localities and state agencies continue to rely on moratoria as a basis for refusing to act on wireless siting applications. Other jurisdictions ignore the shot clocks, or require pre-application procedures or collateral approvals that they contend fall outside the shot clock timelines.

- Lightower, for example, indicated that 85 of its proposed small cell deployments have been prevented by moratoria in four states, with some of the moratoria in place since 2015.[8]

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[5] *See, e.g.*, Comments of the Maine Department of Transportation at 1 ("Maine DOT Comments"), *attached to* AASHTO as Att. 1 (recognizing the importance of next generation wireless broadband and "the economic opportunities and tremendous public benefits" that flow from these services); Comments of the Maryland Department of Transportation State Highway Administration at 1 ("Maryland DOT Comments"), *attached to* AASHTO as Att. 1 (calling the accelerated deployment of wireless broadband "critical to providing enhanced Fifth Generation ('5G') coverage").

[6] *See Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, Public Notice, 31 FCC Rcd 13360, 13363 (WTB 2016) ("*2016 Streamlining Public Notice*").

[7] Comments of the Wireless Infrastructure Association, WT Dkt. No. 16-421, at 5-22 (Mar. 8, 2017); Reply Comments of the Wireless Infrastructure Association, WT Dkt. No. 16-421, at 3-44 (Apr. 7, 2017); WIA Comments at 7-15.

[8] Initial Comments of Lightower Fiber Networks, WT Dkt. No. 17-79, at 14 (Jun. 15, 2017) ("Lightower Comments").

- According to AT&T, at least two states have refused requests to place small cell infrastructure in the ROWs under their control, impacting state highways, major roads, and some arterial roadways in suburban and urban areas.[9]

- In T-Mobile's experience, at least 15 municipalities have no clear application process at all, and some (five jurisdictions and growing) refuse to process small cell requests under ROW permitting processes. And roughly 30% of all of its recently proposed sites (including small cells) involve cases where the locality failed to act in violation of the shot clocks.[10]

- Crown reports that more than a dozen jurisdictions in California have taken the position that the shot clocks do not apply to collateral permits, such as encroachment permits, necessary for deployment of small cell networks.[11]

- Sprint tabulated delays observed reaching ROW access agreements with jurisdictions across the country: "Of 343 jurisdictions that have taken more than six months to reach agreement, for example, 75 have taken more than a year, 11 have taken more than 18 months, and two have taken more than two years."[12]

B. Providers Face Discriminatory Permitting Procedures and Other Barriers.

The record demonstrates that wireless infrastructure deployments often are subject to more burdensome permitting processes than similar deployments involving non-wireless technologies, and localities are imposing unreasonable conditions and erecting other barriers to new deployments and equipment upgrades.

- For example, the majority of jurisdictions T-Mobile has dealt with treat DAS and small cell deployments on poles in ROWs differently than they treat similar installations by landline, cable, or electric utilities.[13]

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[9] AT&T Comments at 13.

[10] T-Mobile Comments at 8, 10.

[11] *See* Comments of Crown Castle International Corporation, WT Dkt. No. 17-79, at 15 (Jun. 15, 2017) ("Crown Castle Comments ").

[12] Comments of Sprint Corporation, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 44 (Jun. 15, 2017) ("Sprint Comments").

[13] T-Mobile Comments at 10.

- Likewise, nearly half of jurisdictions where ExteNet seeks to deploy have subjected it to processes and standards that differed from those required of wireline providers and utilities in public ROWs, even though ExteNet's attachments are similar-sized.[14]

- Communities like San Francisco apply discriminatory pre-deployment aesthetic review requirements for wireless ROW deployments that are not required for other often more conspicuous non-wireless ROW deployments.[15]

- Some localities require wireless providers who seek to collocate or upgrade equipment on existing towers properly constructed pursuant ANSI Class II structural reliability criteria to certify that the tower meets more stringent Class III structural requirements.[16]

- According to Verizon, Washington, D.C. is using an agreement for installing wireless facilities in ROWs that gives the city the ability to require applicants to install—for free—WiFi access points on the poles used by the applicant and to run fiber to each access point.[17]

C. Providers Face Excessive and Discriminatory Non-Cost-Based Fees.

Additionally, the record demonstrates that many localities and governmental entities subject the wireless industry to excessive one-time application fees, annual recurring fees, franchise or use fees, and/or gross revenue fees which are unreasonable, discriminatory, and far exceed actual costs. As one commenter noted, "siting fees are in fact prohibitive, 'directly impacting the evolution to 5G networks' and 'threaten[ing] the economics of a deployment.'"[18]

- For example, Chicago, San Francisco and New York City all charge escalating annual municipal pole attachment fees starting from $4,000 per pole per year—a cost that does

[14] Comments of ExteNet Systems, Inc., WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 17 (Jun. 15, 2017) ("ExteNet Comments").

[15] Crown Castle Comments at 14; T-Mobile Comments at 39-40; *see also* WIA Comments at 12-13 (providing examples where local governments discriminate against wireless carriers seeking to deploy small wireless facilities in ROWs, by applying different permitting requirements than those imposed on other telecommunications carriers and utilities seeking to deploy similarly-sized equipment).

[16] T-Mobile Comments at 40; *see also infra* notes 100-06 and accompanying text (further detailing excessive hardening requirements).

[17] Verizon Comments at 7.

[18] Comments of the Competitive Carriers Association, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 18 (Jun. 15, 2017) ("CCA Comments").

not accurately reflect the cost of review and maintenance expenses, especially when compared to the FCC-regulated attachment rates of $240 per pole per year.[19]

- One quarter of the jurisdictions in which ExteNet has deployed in ROWs charged fees that were not imposed on other telecommunications providers for similar deployments.[20]

- T-Mobile indicates that one-time fees can range up to many tens-of-thousands of dollars per application, while annual use fees can range up to tens-of-thousands of dollars per site.[21]

- At the state level, the Virginia Department of Transportation charges $24,000 for each new pole and $12,000 per collocation on an existing pole, without regard for whether the pole is owned by the state or by a third party.[22]

- Data provided by AT&T shows that one city in Minnesota sought to charge a one-time administrative charge of $5,000, while another Minnesota city recently assessed a one-time administrative charge of $4,000 to attach to a city structure, in addition to applicable permit fees.[23]

- The zoning and permitting costs in one North Carolina town for attaching wireless equipment to existing structures exceeds $10,000, whereas the fees for a similar non-wireless attachment are approximately $200.[24]

II. COMMENTERS URGE THE FCC TO TAKE TARGETED ACTION TO REDUCE LOCAL SITING DELAYS.

The record confirms Commission authority to act now to address the delays that are slowing the deployment of wireless facilities. As commenters explain, the Commission should use that authority to adopt a deemed granted remedy for Section 332 shot clock violations, accelerate those shot clocks, and apply the shot clocks to the entire local approval process.

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[19] *Id.* at 20.

[20] ExteNet Comments at 21-22.

[21] T-Mobile Comments at 7-8.

[22] Crown Castle Comments at 13; *see also* T-Mobile Comments at 28.

[23] AT&T Comments at 18.

[24] Lightower Comments at 22; *see also* T-Mobile Comments at 27 (noting that one western city imposes a $9,500 per site application fee, whereas a nearby community only charges $350 per application).

A. The FCC Should Use Its Authority to Adopt a Deemed Granted Remedy.

The record demonstrates widespread support for a "deemed granted" remedy when state and local agencies fail to satisfy their obligations under Section 332(c)(7)(B)(ii) to act within a reasonable period of time on applications.[25] Notwithstanding claims that there is no evidence wireless carriers find judicial review an inadequate remedy,[26] numerous commenters demonstrate that litigation alone is not a viable solution.[27] As one commenter explains, litigation "is not a realistic remedy since the process can tack on additional months or even years, cost a great deal of resources, and simply may not be as efficient as waiting for the locality to act in its own process, which may exceed the shot clock, effectively nullifying the value of the shot clock."[28]

The record also confirms that the Commission has ample legal authority to adopt a deemed granted remedy, whether in the form of an irrebuttable presumption, lapse of local

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[25] *See, e.g.*, AT&T Comments at 25-27; Comments of Arctic Slope Regional Corp., WT Dkt. No. 17-79, at 7-8 (June 15, 2017); Comments of the Computer & Communications Industry Association, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 8-9 (June 15, 2017) ("CCIA Comments"); CCA Comments at 6-13; Comments of Conterra Broadband Services, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 25-27 (Jun. 15, 2017); Comments of the Critical Infrastructure Coalition, WT Dkt. No. 17-79, at 17-18 (June 15, 2017) ("CIC Comments"); CTIA Comments at 8-11; Crown Castle Comments at 23-28; ExteNet Comments at 11; Comments of the Free State Foundation, WT Dkt. No. 17-79, at 8 (Jun. 15, 2017) ("Free State Comments"); Comments of General Communication, Inc., WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 4, 7-8 (Jun. 15, 2017) ("GCI Comments"); Lightower Comments at 5-9; Comments of Samsung Electronics America, Inc., WT Dkt. No. 17-79, at 6-7 (June 15, 2017) ("Samsung Comments"); Comments of the Telecommunications Industry Association, WT Dkt. No. 17-79, at 2 (Jun. 15, 2017); T-Mobile Comments at 13-18; Verizon Comments at 35-36.

[26] *See, e.g.*, Comments of the National League of Cities Comments, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 3-4 (Jun. 15, 2017) ("National League Comments").

[27] *See, e.g.*, WIA Comments at 16; CTIA Comments at 8-11; Samsung Comments at 6; Lightower Comments at 5-9; CIC Comments at 18.

[28] GCI Comments at 6-7.

government authority, or preemption.[29] First, as commenters demonstrated,[30] adoption of a deemed granted remedy is consistent with the plain text of Section 332(c)(7), which states that a person adversely affected by any act or failure to act by a state or locality "may" seek judicial review.[31] Parties arguing that Section 332(c)(7) bars a deemed granted remedy generally ignore the permissive nature of the court remedy and attempt to read the word "shall" into the statute where it does not exist.[32] Any contrary language in the legislative history cannot overcome the clear and unambiguous elective court option in the statute.[33]

Second, opponents fail to persuasively explain why the Commission should not interpret Section 332(c)(7) in a manner similar to the cable franchise statute, Section 621 of the

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[29] *See Wireless NPRM/NOI*, 32 FCC Rcd at 3334-37 ¶¶ 9-16.

[30] *See, e.g.*, WIA Comments at 17-20; AT&T Comments at 27; CCIA Comments at 8-9; CCA Comments at 6-13; CTIA Comments at 10-11; Samsung Comments at 6-7; T-Mobile Comments at 17-18.

[31] 47 U.S.C. § 332(c)(7)(B)(v).

[32] *See, e.g.*, Comments of the Colorado Communications and Utilities Alliance et al., WT Dkt. No. 17-79, at 8-9 (June 14, 2017) ("CCUA Comments") (claiming that Congress only permitted judicial review under Section 332(c)(7)); Comments of the City of Philadelphia, WT Dkt. No. 17-79, at 2 (Jun. 15, 2017) ("City of Philadelphia Comments") (sole remedy is court review); Comments of the City and County of San Francisco, WT Dkt. No. 17-79, at 14-15 (Jun. 15, 2017) ("San Francisco Comments") (sole remedy is court review); Comments of the Washington State Cities, WC Dkt. No. 17-84, at 7-9 (Jun. 15, 2017) ("Coalition of Washington Cities Comments") (stating that the burden is on the wireless industry to seek court review); Comments of Smart Communities and Special Districts Coalition, WT Dkt. No. 17-79, at 42-43 (Jun. 15, 2017) ("Smart Communities Comments") (failure to act within a reasonable time only gives rise to court remedy).

[33] *See Wireless NPRM/NOI*, 32 FCC Rcd at 3337 ¶ 16; *ACLU v. FCC*, 823 F.2d 1554, 1569 (D.C. Cir. 1987) (holding that "a plain reading of an unambiguous statute cannot be eschewed in favor of a contrary reading, suggested only by the legislative history and not by the text itself," and "[w]e will not permit a committee report to trump clear and unambiguous statutory language."); *see also United States v. Gonzales*, 520 U.S. 1, 6 (1997) (rejecting "resort to legislative history" to interpret a "straightforward statutory command," where "the legislative history only muddies the waters"); *Ratzlaf v. United States*, 510 U.S. 135, 147-48 (1994) (even where there are "contrary indications in the statute's legislative history[,] . . . we do not resort to legislative history to cloud a statutory text that is clear.").

Communications Act.[34] Like Section 332, Section 621 provides that an aggrieved applicant (there, an applicant for a competitive franchise) "may" appeal,[35] but the FCC still adopted a deemed granted remedy. As WIA and others demonstrated,[36] these provisions are substantially similar and the deemed granted remedy adopted in the context of Section 621 was upheld by the Sixth Circuit Court of Appeals.[37]

Third, Sections 201(b) and 303(r) provide authority to adopt a deemed granted remedy.[38] These sections "generally authorize the Commission to adopt rules or issue other orders to carry out the substantive provisions of the Communications Act."[39] As the Supreme Court has recognized, Section 201(b) "explicitly gives the FCC jurisdiction to make rules governing

[34] 47 U.S.C. § 541(a)(1).

[35] *Id*.

[36] *See, e.g.*, WIA Comments at 19-20; CTIA Comments at 8-11; T-Mobile Comments at 17-18; Verizon Comments at 39-40.

[37] *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5103 ¶ 4, 5127-28 ¶ 54, 5132 ¶ 62, 5134-37 ¶¶ 68-73, 5138-39 ¶¶ 77-78 (2007) ("*Cable Policy Act Order*"), *pet. for rev. denied sub nom. Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008), *cert. denied*, 557 U.S. 904 (2009); *see also Cable Policy Act Order*, 22 FCC Rcd at 5140 ¶ 80 (noting that "the deemed grant approach is consistent with other federal regulations designed to address inaction on the part of a State decision maker") (citing examples).

[38] *See, e.g.*, WIA Comments at 18; CTIA Comments at 31; ExteNet Comments at 13-14; Lightower Comments at 8; Samsung Comments at 6-7; T-Mobile Comments at 16-17; Verizon Comments at 41.

[39] *Wireless NPRM/NOI*, 32 FCC Rcd at 3336 ¶ 15 (citation omitted).

matters to which the 1996 Act applies."[40] Section 303(r) supplements that authority.[41] Opponents fail to demonstrate why these provisions do not authorize the requested relief.

Fourth, Section 253(a)—which authorizes the adoption of rules preempting regulations and legal requirements that have the "effect of prohibiting" telecommunications services, including wireless carriers' provision of service[42]—provides further authority to adopt a deemed granted remedy.[43] As the Commission itself recognized, state or local governments' failures to act within reasonable time frames "violate Section 253(a) if they have the 'effect of prohibiting' wireless carriers' provision of service," and this "justif[ies] our addressing this problem by adopting a rule to implement the policies of Section 253(a) as well as Section 332(c)(7)."[44]

Finally, there is no merit to the suggestion that the FCC lacks authority to adopt a deemed granted remedy because an analysis of the "nature and scope" of a siting request is impossible under a deemed granted approach.[45] The Commission has adopted different shots clocks that vary depending upon the nature of a siting request. The requirement to take into account the nature and scope of the request in Section 332 is thus linked to action within a reasonable period of time, and the shot clocks already vary depending upon the nature of a siting request. In other

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[40] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 380 (1999); *see City of Arlington v. FCC*, 133 S. Ct. 1863, 1866 (2013) (stating, in the context of Section 332(c)(7), that "Section 201(b) . . . empowers the . . . Commission to 'prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions.' Of course, that rulemaking authority extends to the subsequently added portions of the Act.") (quoting 47 U.S.C. § 201(b)).

[41] *See, e.g., Cellco Partnership v. FCC*, 700 F.3d 534, 543 (D.C. Cir. 2012).

[42] 47 U.S.C. § 253(a).

[43] WIA Comments at 18-19; ExteNet Comments at 14; T-Mobile Comments at 17.

[44] *Wireless NPRM/NOI*, 32 FCC Rcd at 3336 ¶ 15 n.30.

[45] *See* Smart Communities Comments at 40.

words, the time period that must lapse before a wireless siting request would be deemed granted already varies depending upon the nature and scope of the request.[46]

B. The FCC Should Accelerate the Section 332 Shot Clocks.

The record demonstrates widespread support for reducing the current Section 332 shot clock timeframes (90 days for collocations and 150 days for all other wireless siting applications) to act on wireless siting applications.[47]

In its comments, WIA proposed a 60-day shot clock for all applications involving small wireless facilities located on an existing or replacement pole in a public ROW, applications for non-Spectrum Act collocations, applications involving like-for-like replacements of existing facilities, and applications for compound expansions; a 90-day shot clock for applications involving substantial modifications, including tower extensions; and a 120-day shot clock for applications for all other facilities, including new macro sites.[48] Other parties offered other formulations, including: a 60-day shot clock for collocations (including small cells/DAS attachments) and a 90-day shot clock for all other facilities;[49] a 30-day shot clock for collocations and a 60-75-day shot clock for all other siting applications;[50] a 60-day shot clock for wireless facilities on utility poles and streetlights, and a 90-day shot clock for new ROW utility

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[46] *See also* Verizon Comments at 38.

[47] *See, e.g.*, WIA Comments at 20-23; Crown Castle Comments at 28-30; CTIA Comments at 11-13; ExteNet Comments at 8-10; Free State Comments at 9-11; GCI Comments at 6-7; Lightower Comments at 10-13; Mobilitie Comments at 6; T-Mobile Comments at 18-22; Verizon Comments at 41-44.

[48] WIA Comments at 20-23.

[49] CTIA Comments at 11-12; Crown Castle Comments at 29; ExteNet Comments at 8; GCI Comments at 6-7; Comments of Mobile Future, WT Dkt. No. 17-79, at 7-8 (Jun. 15, 2017) ("Mobile Future Comments"); Samsung Comments at 4-5; T-Mobile Comments at 18-21.

[50] CCA Comments at 13-14.

structures;[51] or a 60-day shot clock for collocations,[52] certain small cells,[53] or new and collocated small facilities.[54]

Like WIA, parties advocating a 60-day shot clock for collocations noted that it will align the collocation shot clock under Section 332 with the period for non-substantial modifications to existing facilities under Section 6409(a).[55] Regardless of the approach, however, the message is plain: the Commission must shorten its existing Section 332 shot clocks to address the unreasonable delays providers continue to encounter and which will become increasingly unworkable as the deployment of small wireless facilities and new and upgraded macrocells accelerates.

The record demonstrates that shorter deadlines for local action are feasible. For example, Michigan and Virginia require non-collocation applications to be reviewed within 90 days; Kentucky and Minnesota set 60-day deadlines to process non-collocation or new tower applications; Florida requires completed collocation applications to be processed in 45 business days; and New Hampshire and Wisconsin require processing in only 45 calendar days.[56] Similarly, the Maine Department of Transportation's rules require utility location permits to be processed within 60 days and most are processed within 30 days.[57]

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[51] Lightower Comments at 12-14.

[52] Sprint Comments at 46; Comments of the Wireless Internet Service Providers Association, WT Dkt. No. 17-79, at 4-5 (Jun. 15, 2017) ("WISPA Comments").

[53] Verizon Comments at 41-42.

[54] Mobilitie Comments at 6.

[55] *See, e.g.*, CTIA Comments at 11-12; ExteNet Comments at 8; WISPA Comments at 4-5.

[56] *See* CCA Comments at 14; T-Mobile Comments at 19-20.

[57] Maine DOT Comments at 2.

Finally, the record shows that batching applications into a single filing should have no impact on the period deemed "reasonable" for review. As various commenters explain, batching applications simplifies the review process and reduces the strain on local resources.[58] While some localities and state agencies claim that more time should be permitted to review batched applications because they are often incomplete,[59] this concern does not justify a longer shot clock for batched applications; the shot clocks are already tolled by incomplete applications.[60] Moreover, the volume of wireless sites involved in a submission does not justify additional time for local review. Merely bundling similar sites into a single batched application should not provide a locality with more time to review a single batched application than to process the same applications if submitted individually.

C. The FCC Should Apply its Shot Clocks to the Entire Approval Process.

Commenters recognize the need for Commission clarification that the shot clock timeframes apply to the entire local siting process.[61] Thus, if a locality establishes a multi-tiered approach for wireless siting, the entire process must be completed within the relevant shot clock period.

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[58] *See, e.g.*, WIA Comments at 25; CTIA Comments at 16; CCA Comments at 15.

[59] *See, e.g.*, Delaware DOT Comments at 2.

[60] *See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12875 ¶ 22, 12696-71 ¶¶ 254-262 (2014) ("*Siting Polices Order*"), *pet. for rev. denied sub nom. Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015). Specifically, a state or municipality may toll the applicable shot clock if it notifies the applicant within 30 days of submission that its application is incomplete. That notification must be in writing, delineate all missing information, and specify the code provision, ordinance, application instruction, or other publically-stated procedure that requires the information to be submitted. *Siting Policies Order*, at 12875 ¶ 22.

[61] *See, e.g.*, CTIA Comments at 15; Mobilitie Comments at 6-7; T-Mobile Comments at 21-22.

First, the Commission should clarify that the shot clocks include pre-application reviews.[62] The record demonstrates that many localities and state agencies are implementing multi-tiered approaches to the wireless siting process and claim that the Commission's shot clocks only apply to certain portions of this process.[63] Particularly troubling is the increasing number of jurisdictions and state transportation departments relying on lengthy pre-application review procedures they claim are exempt from the FCC's wireless siting shot clocks. For example, the Smart Communities and Special Districts Coalition touts the use of pre-application processes because they are not covered by the wireless siting shot clocks;[64] the City of Greenwood, Colorado requires a lengthy pre-application review, even for collocations on existing poles;[65] and the Georgia Department of Transportation credits the importance of "pre-application" review because it is not subject to the shot clocks.[66] These regulatory schemes thwart the effectiveness of the shot clocks and substantially delay wireless infrastructure deployment.

The Commission also should clarify that the wireless siting shot clocks apply to ROW access and franchise agreement negotiations. Clarification is necessary because some localities

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[62] *See, e.g.*, CIC Comments at 18; T-Mobile Comments at 21-22. At a minimum, pre-application reviews, if not counted toward the shot clocks, should be limited to no more than 60 days. *See* ExteNet Comments at 15.

[63] *See, e.g.*, WIA Comments at 8, 24; CTIA Comments at 15; AT&T Comments at 25; CCA Comments at 14; CIC Comments at 18; Mobilitie Comments at 6.

[64] Smart Communities Comments at 15, 32.

[65] Crown Castle Comments at 15.

[66] Comments of the Georgia Department of Transportation at 2, *attached to* AASHTO as Att. 1. The Florida Department of Transportation also states that it has 90 days from the date a permit is deemed complete to process a permit application. It claims it is entitled to an additional 30 days to determine whether a permit application is complete—effectively extending the review period to 120 days. Comments of the Florida Department of Transportation at 1, *attached to* AASHTO as Att. 1.

claim that these processes are proprietary in nature and outside the scope of the existing shot clocks.[67] As one commenter noted, "If a locality can deny indefinitely a decision on a permit seeking access to ROW or facilities therein, it can effectively 'wall off' virtually all of its streets, and deployment will be severely delayed, if not blocked altogether."[68]

Additionally, the Commission should reject suggestions that the shot clocks be tolled where a state or locality seeks to obtain public input.[69] Wireless siting is not new, and municipalities should have procedures in place to obtain, where necessary, public input within the shot clock timeframes. The fact that many states and localities have adopted laws and regulations mandating action on wireless siting applications within the shot clock time frames demonstrates that the need for public comment is not a valid basis for tolling the shot clocks.[70]

III. COMMENTERS URGE THE FCC TO FURTHER INTERPRET AND CLARIFY SECTIONS 253 AND 332(c)(7).

As discussed below, commenters further urge the Commission to use its authority to interpret and clarify Sections 253 and 332 to address additional deployment barriers. The need for prompt Commission action is highlighted by the differing views between industry and state and local governments over the scope of these sections and their use of key terms.

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[67] *See, e.g.*, Joint Comments of League of Arizona Cities and Towns et al., WC Dkt. No. 17-84, at 9-10 (June 15, 2017); Comments of National Association of Telecommunications Officers and Advisors et al., WT Dkt. No. 13-238, at 14 (Feb. 3, 2014), *attached to* NATOA Comments, WT Dkt. No. 17-79 & WC Dkt. No. 17-84 (June 15, 2017); *accord* Comments of the City of Chicago, WC Dkt. No. 17-84, at 6 (June 15, 2017); Comments of the City of New Orleans, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 8 (June 15, 2017) ("New Orleans Comments"); *see also infra* Section III.E.

[68] CTIA Comments at 14-15.

[69] *See* Maryland DOT Comments at 1-3 (urging the Commission to include a "time out" provision where public comment is sought).

[70] *See infra* notes 56-57 and accompanying text.

A. The FCC Has Ample Authority to Act.

The record demonstrates that the Commission has authority to issue a declaratory ruling interpreting Sections 253 and 332.[71] It is well established that the Commission can issue declaratory rulings interpreting ambiguous provisions of the Communications Act.[72] As commenters note,[73] the Supreme Court has found that the Commission has broad authority to interpret provisions of the Telecommunications Act of 1996, which includes Sections 253 and 332(c)(7).[74] The record further confirms that the Commission's authority to interpret ambiguities has been upheld by courts on multiple occasions with respect to both Section 253 and 332(c)(7).[75]

While some parties contend that the Commission's ability to preempt pursuant to Section 253(d) does not extend to Section 253(c)—and therefore any issues related to ROW management must be addressed by the courts rather than the Commission[76]—that narrow view has been

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[71] *See, e.g.*, WIA Comments at 29; CCA Comments at 22-24; CTIA Comments at 18-19; ExteNet Comments at 45-46; Lightower Comments at 17-18; T-Mobile Comments at 54-56.

[72] *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14020 ¶ 67 (2009), *aff'd, City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

[73] *See, e.g.*, WIA Comments at 18; CTIA Comments at 40; Verizon Comments at 30.

[74] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 377-78.

[75] *See* WIA Comments at 29-30 (citing *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002); *BellSouth T, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1188 n.l (6th Cir. 2001); *N.Y. State Thruway Auth. v. Level 3 Communications, LLC*, 734 F. Supp. 2d 257, 265 (N.D.N.Y. 2010); *Montgomery County*, 811 F.3d 121; *City of Arlington*, 668 F.3d 229; *Mobile S., LLC v. City of Roswell*, 135 S. Ct. 808, 817 (2015)).

[76] *See* Comment of the California Public Utilities Commission, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 9-13 (June 15, 2017) ("CPUC Comments"); San Francisco Comments at 22-23; Comments of the Virginia Joint Commenters, WT Dkt. No. 16-421, at iii, 41-42 (Mar. 8, 2017); Comments of the City of New York City, WT Dkt. No. 17-79, at 8 (Jun. 15, 2017) ("New York

rejected. The Second Circuit in *White Plains* correctly describes the Commission's preemption authority under Section 253. It determined that "the plain language of the [Section 253] text which allows the FCC to preempt provisions inconsistent with subsection (a) strongly implies that the FCC has the ability to interpret subsection (c) to determine whether provisions are protected from preemption."[77] Furthermore, "because § 253(c) provides a defense to alleged violations of § 253(a) or (b), if § 253(d) were read to preclude FCC consideration of disputes involving the interpretation of § 253(c), it would create a procedural oddity where the appropriate forum would be determined by the defendant's answer, not the complaint."[78]

Other parties claim that Section 253(d) limits FCC action under Section 253 to only "case-by-case" adjudications, and therefore does not allow the FCC to issue broadly applicable declaratory rulings interpreting Section 253, let alone new rules.[79] This argument is likewise without merit. While 253(d) provides an avenue for FCC action under Section 253 (preemption of offending regulations or requirements), it is only one tool available to the Commission. As noted, the Commission has broad discretion as to how it conducts its proceedings, including the discretion to issue declaratory rulings interpreting ambiguous provisions like Section 253.[80]

Comments"). *But see* Joint Comments of League of Arizona Cities and Towns et al., WT Dkt. No. 17-79, at 40-41 (Jun. 15, 2017) ("Arizona Cities Dkt. 17-79 Comments").

[77] *City of White Plains*, 305 F.3d at 75-76.

[78] *Id*. at 75-76.

[79] *See, e.g.*, Smart Communities Comments at 57-58. Other commenters claim that this case-by-case requirement even prohibits the Commission from adopting rules in this area. *See* CPUC Comments at 9-11 (FCC only has authority under Section 253(d) to proceed through adjudication); City of Philadelphia Comments at 7; Comments of Fairfax County, Virginia, WT Dkt. No. 17-79, at 17 (filed June 15, 2017) ("Fairfax County Comments") (filed as Frederick E. Ellrod III). There is no merit to these claims.

[80] *See supra* notes 71-75 and accompanying text; *see also* WIA Comments at 29; T-Mobile Comments at 54-56.

Indeed, the Commission already has exercised this authority in the context of Section 253, and that authority has been upheld by the courts.[81]

Claims by some local governments that Section 253 does not apply to wireless facilities[82] have long since been discredited. Section 253 on its face applies to "any" telecommunications service,[83] and the Supreme Court long ago concluded that wireless service constitutes telecommunications.[84] The Commission also has previously noted that Section 253 applies to CMRS services.[85]

Finally, the Commission should reject claims that it lacks the authority to apply Section 253 to wireless services because broadband may soon again be classified as information service.[86] Rather, as T-Mobile has explained, the Commission should make clear that that Section 253 (and 332) apply to "mixed-use" facilities—*i.e.*, facilities that are used to provide *both* telecommunications (including wireless) *and* mobile broadband.[87]

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[81] *See* T-Mobile Comments at 54-55 (citing *Roswell*, 135 S. Ct. at 817; *California Payphone*, 12 FCC Rcd 14191, 14206 (1997); *City of White Plains*, 305 F.3d at 76; *Town of Palm Beach*, 252 F.3d at 1188 n.l; *Level 3 Communications*, 734 F. Supp. 2d at 265).

[82] Smart Communities Comments at 56.

[83] *See* 47 U.S.C. § 253(a) ("No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide *any* interstate or intrastate *telecommunications* service.") (emphasis added).

[84] *National Cable & Telecommunications Association v. Gulf Power Co.*, 534 U.S. 327, 340 (2002) ("a provider of wireless telecommunications service is a 'provider of telecommunications service'").

[85] *Federal Joint Board on Universal Service*, Fourth Order on Reconsideration and Report and Order, 13 FCC Rcd 5318, 5486 ¶ 302 (1997) ("To demonstrate that state universal service contribution requirements for CMRS providers violate section 253, there must be a showing that the state universal service programs act as a barrier to entry for CMRS providers and are not competitively neutral").

[86] Smart Communities Comments at 55; *see* CCUA Comments at 15.

[87] *See* T-Mobile Comments at 52.

B. The FCC Should Clarify the Section 253 Effective Prohibition Test.

Commenters strongly urge the Commission to eliminate any ambiguity regarding what constitutes an effective prohibition under Section 253.[88] The status quo is not acceptable.

As the record demonstrates, the Commission in its *California Payphone* order determined that a regulation effectively prohibits service under Section 253 if it "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[89] Some courts have followed a similar approach —finding that regulations effectively prohibit service under Section 253 if they impede or create a substantial barrier to entry.[90] Other courts, however, have adopted a more restrictive interpretation — concluding that a regulation runs afoul of Section 253 only if it actually prohibits service.[91] While some localities prefer the status quo because of the restrictive interpretations of these courts,[92] the scope of Section 253 should not vary depending upon the jurisdiction in which a

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[88] *See, e.g.*, WIA Comments at 32-38; AT&T Comments at 9; CTIA Comments at 18-22; ExteNet Comments at 22-28; Lightower Comments at 18-19; T-Mobile Comments at 33-41.

[89] *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California Pursuant to Section 253(d) of the Communications Act of 1934*, Memorandum Opinion and Order, 12 FCC Rcd 14191, 14206 ¶ 31 (1997) ("*California Payphone*").

[90] *See City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1175-76 (9th Cir. 2001), *overruled by Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1269-70 (10th Cir. 2004); *see also City of White Plains*, 305 F.3d at 76-77; *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006). Although the Ninth Circuit subsequently departed from the *Auburn* standard, the Commission should clarify that the *Auburn* standard is the correct approach for the reasons set forth in WIA's initial comments. *See* WIA Comments at 34-38.

[91] *Level 3 Communications, LLC v. City of St. Louis*, 477 F.3d 528, 533-34 (8th Cir. 2007); *Sprint Telephony PCS*, 543 F.3d at 576-79.

[92] *See, e.g.*, Fairfax County Comments at 20; Smart Communities Comments at 4.

case is brought. WIA therefore agrees that a "clear, national interpretation" is needed "to resolve inconsistent court interpretations."[93]

Specifically, the Commission should clarify that a regulation prohibits or effectively prohibits service contrary to Section 253(a) if it either (1) materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment; or (2) impedes, in combination or as a whole, the provision of any telecommunications service, including but not limited to requirements that leave local governments unfettered discretion over applications, significantly increase cost, and impose lengthy or onerous application processes.[94] Such a clarification would be consistent with the *California Payphone* standard and the *Auburn* line of court decisions applying this standard.

Applying this standard, commenters agree the Commission should identify specific practices that materially inhibit competition or impede telecommunications, and therefore constitute an effective prohibition of service. Such practices include moratoria (actual or *de facto*) and unreasonable conditions on local siting approvals.

The FCC should prohibit wireless siting moratoria. The record contains extensive support for a Commission declaration that moratoria—whether express or *de facto*—on the deployment of wireless and/or telecommunications facilities are prohibited.[95] Not surprisingly,

[93] CCA Comments at 21-22.

[94] WIA Comments at 34-38; ExteNet Comments at 22-23; *see also* CCA Comments at 22; Charter Comments at 8-10; T-Mobile Comments at 35-40.

[95] *See, e.g.*, WIA Comments at 55-56; AT&T Comments at 14; Comments of AT&T Services, WC Dkt. No. 17-84, at 74 (Jun. 15, 2017); Crown Castle Comments at 32-33; CTIA Comments at 22-24; CIC Comments at 19-20; CCA Comments at 16-17; ExteNet Comments at 10; Mobilitie Comments at 7; Mobile Future Comments at 9; Samsung Comments at 7-8; Sprint Comments at 41-43; T-Mobile Comments at 36-38; Verizon Comments at 33-34.

some localities claim that there is no need for such a Commission declaration,[96] arguing that moratoria should be permitted as a resource management tool.[97] These comments reinforce the need for an express prohibition on wireless siting moratoria.

The FCC should prohibit unreasonable siting approval conditions. The record contains numerous examples of conditions—entirely unrelated to wireless siting and/or ROW management—that localities and regulators are attempting to impose on the wireless industry as part of the siting process.[98] The Commission should declare that such conditions unrelated to wireless siting or ROW management are *per se* unreasonable and thus cannot be imposed by local authorities. Such conditions would include, among other things, requiring applicants to (i) donate services; (ii) install equipment for free; (iii) transfer ownership of the facility to the locality; (iv) construct new roads or sidewalks; and (v) construct additional facilities not planned by the applicant. All of these conditions impose costs on the wireless industry and divert funds available for deployment.[99]

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[96] *See, e.g.*, Smart Communities Comments at 32-33; Comments of the Illinois Municipal League, WT Dkt. No. 17-79, at 2 (Jun. 15, 2017) ("Illinois Municipal League Comments"); Comments of San Antonio, Texas, WT Dkt. No. 17-79, at Ex. B 19-21 (June 15, 2017); Comments of the Minnesota Cities Coalition, WC Dkt. No. 17-84, at 18-19 (Jun. 15, 2017) ("Minnesota Cities Coalition Comments"); Comments of the City of Norfolk, Virginia, WC Dkt. No. 17-84, at 16-18 (Jun. 15, 2017) ("Norfolk Comments"); Coalition of Washington Cities Comments at 17.

[97] *See* Illinois Municipal League Comments at 2; Arizona Cities Dkt. 17-79 Comments at 11-13; Comments of the Idaho Department of Transportation at 6 ¶ 6 ("Idaho DOT Comments"), *attached to* AASHTO as Att. 1; Comments of the League of Minnesota Cities, WT Dkt. Nos. 17-79 & 15-180, at 15 (Jun. 13, 2017) ("League of Minnesota Cities Comments"); *accord* Minnesota Cities Coalition Comments at 18-19; Norfolk Comments at 16-18.

[98] *See, e.g.*, WIA Comments at 57-58; AT&T Comments at 19; Mobilitie Comments at 7; Verizon Comments at 33-34.

[99] *See, e.g.*, Comments of the R Street Institute, WC Dkt. No. 17-84, at 7-9 (Jun. 15, 2017).

Likewise, WIA agrees with commenters that the imposition of unnecessary tower hardening requirements as a condition of allowing equipment upgrades or collocations is an effective prohibition.[100] The record shows that some localities are requiring wireless providers who seek to collocate or upgrade equipment on existing towers properly constructed pursuant ANSI Class II structural reliability criteria to certify that the tower meets more stringent Class III structural requirements.[101] In other words, even where the jurisdiction has incorporated Class II standards commonly used for wireless and broadcast services into its building code, it is imposing Class III standards primarily used for essential communications like civil or national defense and military facilities—standards that are unnecessary for safety purposes and do not apply to other similar structures.[102] The Commission should declare that such action impedes the provision of telecommunications, and is therefore an effective prohibition of service contrary to Section 253.

As T-Mobile has explained, "[r]equiring a Class III certification means a potential wireless service collocator must convince a tower owner to enhance an existing tower beyond the industry standard—with substantial associated costs and delay—and effectively makes that existing resource unavailable for future wireless collocations and equipment upgrades if the owner declines to do so."[103] Moreover, even if the tower owner were to choose to meet the Class

[100] *See* T-Mobile Comments at 40-41; CCA Comments at 19-20 n.75.

[101] *See* T-Mobile Comments at 40-41; CCA Comments at 19-20 n.75.

[102] *See* William Garrett & Bryan Lanier, Wireless Infrastructure Association, Classification of Tower Structures per ANSI/TIA-222-G, IBC and ASCE-7, at 2-4 (Jul. 2016) ("WIA Tower Classification White Paper"), http://wia.org/wp-content/uploads/White-Paper-Structure-Class-5-1-17.pdf.

[103] T-Mobile Comments at 41.

III criteria, doing so is unlikely to achieve meaningful service benefits.[104] That is because structural reliability issues rarely cause wireless service outages when it comes to natural disasters; rather, loss of power or equipment due to damaging winds or flooding are more often the cause for lack of service. In other words, rigorous Class II standards already ensure towers have the necessary strength to survive damaging conditions.[105] As a consequence, such extreme hardening requirements do little more than impose additional needless costs and delay or—worst still—deter equipment upgrades or capacity-enhancing collocations altogether.[106]

C. The FCC Should Reject the Judge-Made Section 332 Coverage Gap Test.

Numerous commenters urge the Commission to repudiate the "significant gap" test created by some courts to interpret the effective prohibition standard under Section 332(c)(7)(B)(i)(II).[107] Under the significant gap test, a petitioner must demonstrate a "significant gap" in coverage and that the proposed facility is the "least intrusive means" of remedying the gap or there is no "feasible alternative."[108] This test was established, however, when macro cells were being used to expand and provide coverage to consumers. It does not fit today's reality

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[104] *See* WIA Tower Classification White Paper at 3, 11-12.

[105] *See id*. at 11 ("In the vast majority of wireless tower supported networks, inherent redundancy exists, including networks that support emergency services such as E911. Because of this redundancy, application of higher risk categorization and the associated increased structural load factors applied to individual towers has little effect on the resiliency of overall network performance.").

[106] *See* CCA Comments at 20 n.75 (noting that these practices "impose exorbitant cost without any legitimate public safety benefit").

[107] *See, e.g.*, WIA Comments at 38-40; AT&T Comments at 10; CTIA Comments at 18-19, 21-22; CCA Comments at 21-22; Mobilitie Comments at 7; T-Mobile Comments at 11; Verizon Comments at 9-10, 17-18.

[108] *See 2016 Streamlining Public Notice*, 31 FCC Rcd at 13369-70 (citing cases).

when many consumers are unable to obtain service due to capacity limits and carriers are deploying small wireless facilities to address these service issues.[109]

The record demonstrates that old tests interpreting what is an effective prohibition based on coverage gaps are no longer meaningful or workable at a time when tens or even hundreds of thousands of small cells will be deployed, often in critical ROWs. As AT&T has explained, the focus on gaps in coverage "is far too narrow" and "is particularly ill-suited for analyzing small-cell deployments, which are by definition used to expand capacity and throughput in circumstances where coverage already exists."[110] Sprint concurs, noting that "[w]ireless carriers can no longer provide coverage maps, participate in extensive zoning hearings, and pay third-party consultants to produce a study about whether a small cell should be placed in one of ten potential locations in a locality."[111] And ExteNet explains that a significant gap test is "meaningless and obsolete" in the context of distributed network systems ("DNS") like DAS and small cells, particularly when applied to ROWs, given that public ROWs "are often the only reasonable means through which DNS facilities may be deployed."[112] Eliminating the coverage gap test is therefore an important step toward removing barriers to small wireless facility deployments.

Commenters likewise agree with WIA that the Commission should declare that the regulation of need, technology, coverage/capacity, least intrusive means, or other business issues constitute an effective prohibition contrary to Section 332. For example, the record shows that

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[109] *See, e.g.*, WIA Comments at 38-39; CTIA Comments at 21-22; T-Mobile Comments at 11; Verizon Comments at 17-18.

[110] AT&T Comments at 10.

[111] Sprint Comments at 39.

[112] *See* ExteNet Comments at 29-30.

nearly 40 California localities require the submission of propagation maps to demonstrate additional wireless infrastructure is needed to fill a coverage gap,[113] as do two cities in Illinois, five jurisdictions in Minnesota, and two jurisdictions in Ohio.[114] Similarly, several jurisdictions in Washington require small cell ROW proponents to demonstrate a significant gap in coverage, discuss why using the ROW is the least intrusive means to fill that gap, and/or assess the feasibility of alternative sites not in the ROW.[115] A mid-Atlantic county also requires applicants to "provide proof" of the need to upgrade coverage or capacity, while a consortium of cities in another state has proposed a model ordinance that contains a similar provision.[116] But as T-Mobile has explained, such need-based decisions are made every day by network engineers based on spectrum reuse and capacity demands.[117] Therefore, "the 'need' for a site or modification should be presumed, not second guessed, by localities that lack the expertise to evaluate these decisions,"[118] and the FCC should preempt local government regulations requiring wireless applicants to prove the need for new or modified wireless facilities since it effectively gives local jurisdictions veto power over use of licensed wireless spectrum.

In the event the FCC nonetheless determines that localities may consider coverage issues as part of their review under Section 332, the record supports the adoption of guidelines regarding the appropriate scope of that consideration.[119] That is, a gap in service should be

[113] Comments of Mobilitie, LLC, WT Dkt. No. 16-421 at 13 (Mar. 8, 2017).

[114] *Id*.

[115] *Id*.

[116] Comments of Sprint Corporation, WT Dkt. No. 16-421, at 22 (Mar. 8, 2017).

[117] T-Mobile Comments at 43.

[118] *Id.*

[119] *See id.*

deemed to exist where a provider concludes that it does not or will not have sufficient signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings.[120] Importantly, the assessment of sufficient signal strength or system capacity should be made by the provider based on its expertise, not the local jurisdiction.[121]

D. The FCC Should Declare Wireless Siting Fees Must Be Cost-Based.

The record contains widespread support for a Commission declaration that all fees related to wireless siting must be cost-based.[122] That support extends beyond wireless carriers and infrastructure providers. The Delaware Department of Transportation, for example, urged the FCC to limit fees to "the actual, reasonable costs borne" by the jurisdiction processing a wireless siting request.[123] Moreover, states like Missouri have already adopted, or are considering, legislating cost-based wireless siting fees.[124]

In adopting a requirement that all wireless siting fees be cost-based, the Commission should clarify that such fees are limited to "actual costs" incurred by the jurisdiction. For example, the record shows that fees should not include costs incurred due to the use of consultants that are not directly related to demonstrable costs associated with the review, processing, and approval of an application.[125] Nor should localities be permitted to use the

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[120] *See id.*

[121] *See id.*

[122] *See, e.g.*, WIA Comments at 40-53; AT&T Comments at 17-21; CCA Comments at 18-19; CTIA Comments at 29-33; ExteNet Comments at 43; Comments of the Minnesota Telecom Alliance, WC Dkt. No. 17-84, at 5-6 (Jun. 15, 2017); Mobile Future Comments at 9; Mobilitie Comments at 4-5; Samsung Comments at 8; T-Mobile Comments at 27-29, 31-33; Comments of the Wireless Internet Service Providers Association, WC Dkt. No. 17-84, at 6 (Jun. 15, 2017).

[123] Delaware DOT Comments at 3.

[124] *See, e.g.*, Mo. Rev. Stat. § 67.5094(11).

[125] *See, e.g.*, T-Mobile Comments at 31-32.

wireless siting process as means of generating revenue, as revenue-generating fees can substantially increase carrier costs and effectively prohibit the provision of service.[126] Other fees that are not cost-based—such as franchise fees and "market value" fees—also must be eliminated to ensure the timely rollout of next generation wireless services.[127]

Numerous commenters agree the Commission should extend this cost-based approach to fees charged for the use of public ROWs, especially in light of the exorbitant fees often charged for ROW access.[128] AT&T, for example, explained that these fees can discourage providers from investing in or expanding networks, and may cause them to shrink the scale of a project or forgo altogether the deployment of small cells in certain municipalities.[129] Indeed, if small cell deployment projections of nearly 800,000 by 2026 hold true, "a ROW fee of $1,000 per year (a modest sum relative to current ROW access and attachment fees) would result in nearly $800 million *annually* in foregone investment."[130]

As WIA and others demonstrated in their initial comments,[131] the argument that localities should be allowed to charge market-based, rather than cost-based, rates is flawed.[132] There is no

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[126] *See, e.g.*, WIA Comments at 50-51; ExteNet Comments at 41-43; *accord* CTIA Comments at 16.

[127] *See* AT&T Comments at 20; CCA Comments at 19; CTIA Comments at 20, 33.

[128] *See, e.g.*, WIA Comments at 41-53; CTIA Comments at 33; ExteNet Comments at 43; Verizon Comments at 31.

[129] AT&T Comments at 19-20.

[130] *Id.*

[131] *See, e.g.*, WIA Comments at 50; AT&T Comments at 18; CTIA Comments at 33; Mobilitie Comments at 5; Verizon Comments at 14.

[132] *See, e.g.*, Comments of AASHTO, WT Dkt. No. 17-79, at 2-3 (Jun. 15, 2017); Idaho DOT Comments at 8 ¶ 14; Comments of the Texas Department of Transportation, *attached to* AASHTO as Att. 1; Comments of the Washington State Department of Transportation ("Washington State DOT Comments"), *attached to* AASHTO as Att. 1; Comments of the City of Bellevue et al., WT Dkt. No. 17-79, at 10-12 (Jun. 14, 2017); CCUA Comments at 21; Arizona

market rate for access to ROWs, because localities exercise monopoly control over the ROWs. Commission action is therefore necessary to prevent localities from charging monopoly rents for ROW access. Such fees constitute barriers to deployment and ultimately raise costs for consumers.

There also is no merit to the claim that the wireless industry is looking for "free" ROW access or a "gift."[133] Providers merely want to eliminate unreasonable, excessive, and discriminatory charges by allowing jurisdictions to recover their costs but not to profit from the deployment of wireless facilities that benefit their citizens, communities, and public safety. Because localities would still be imposing a fee for their actual costs, ROW access is neither free nor a gift.

E. The FCC Should Clarify Application of Sections 253 and 332 to ROWs.

Although various localities and state regulatory agencies claim that Sections 253 and 332 are inapplicable to wireless siting proposals involving public ROWs and associated poles—arguing that access to these public resources is a proprietary function beyond the scope of these

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Cities Dkt. 17-79 Comments at 50; League of Minnesota Cities Comments at 19-20; National League Comments, Att. at 7-8; Reply Comments of the National Association of Telecommunications Officers and Advisors, et al., WT Dkt. No. 16-421, at 3 (Apr. 7, 2017) ("NATOA Reply Comments"), *attached to* NATOA Comments; San Francisco Comments at 30.

[133] *See, e.g.*, Comments of Cityscape Consultants, Inc., WT Dkt. No 17-79 & WC Dkt. No. 17-84, at 3 (Jun. 15, 2017); New York Comments at 12-13; Smart Communities Comments at 7, 77; Comments of the Virginia Joint Commenters, WT Dkt. No. 17-79, at 6 (Jun. 15, 2017); San Francisco Comments at 30; *accord* NATOA Reply Comments at 3.

Sections[134]—these claims are misplaced. The record demonstrates that Sections 253 and 332 do apply to wireless siting proposals involving public ROWs and associated poles.[135]

As a threshold matter, granting wireless siting access to ROWs (and associated municipal poles) is a regulatory function subject to Sections 253 and 332.[136] As AT&T demonstrated:

> A municipality holds the ROW in trust for the public, not as an owner, and, subject to state law, can regulate the time, place, and manner of its use. In contrast, a municipality's role as a private property owner involves complete discretion to buy, sell, and manage property as it deems appropriate. Insulating local government regulatory action from preemption by categorizing it as "proprietary" would effectively rewrite Sections 253 and 332, allowing municipalities to bar wireless facilities deployment in ROWs with impunity.[137]

In any case, Section 253 applies to ROW management regardless of whether it is classified as a regulatory or proprietary function. Section 253(a) applies to any "regulation, or *other . . . legal requirement*."[138] Thus, whether the city's actions are "regulatory" or "proprietary" is irrelevant under Section 253—if wireless providers are legally required to comply with local ROW restrictions and conditions, Section 253 applies.[139]

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[134] *See, e.g.*, Comments of the Virginia Joint Commenters, WC Dkt. No. 17-84, at 5-7 (Jun. 15, 2017); Idaho DOT Comments at 8 ¶ 15; Washington State DOT Comments at 1-2; Fairfax County Comments at 21-22; San Francisco Comments at 3, 28-30; Smart Communities Comments at 4.

[135] *See, e.g.*, WIA Comments at 59-62; AT&T Comments at 11; CCA Comments at 20-21; CCIA Comments at 13; CTIA Comments at 14-15; Mobilitie Comments at 7-8; T-Mobile Comments at 48-51.

[136] *See, e.g.*, WIA Comments at 59-62; AT&T Comments at 11; CCIA Comments at 13; CTIA Comments at 14-15; Mobilitie Comments at 7-8; T-Mobile Comments at 48-51.

[137] AT&T Comments at 11; *accord* ExteNet Comments at 41-43.

[138] 47 U.S.C. § 253(a) (emphasis added).

[139] *See, e.g.*, WIA Comments at 59-60; Crown Castle Comments at 49; Verizon Comments at 25-29.

IV. THE RECORD DEMONSTRATES THE IMPORTANCE OF STREAMLINING ENVIRONMENTAL REVIEWS.

The record supports further efforts to streamline and clarify the environmental rules and procedures implementing the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA") applicable to wireless deployments. Commenters agree that the current rules and exemptions are confusing. As Lightower explained, "so much has been written over the years in various places, it is now nearly impossible for any two people to agree on what anything means."[140] The record also supports reforming the Tribal review process and resolving the treatment of Twilight Towers, consistent with the joint comments WIA filed with CTIA and the joint reply comments the associations are filing together today.[141]

A. The FCC Should Further Streamline NEPA Reviews.

There is broad support for the Commission to further streamline NEPA reviews by eliminating the need for most floodplain Environmental Assessments ("EAs"),[142] expanding the NEPA categorical exclusions for small wireless facilities,[143] and establishing shot clocks to

[140] Lightower Comments at 14.

[141] *See* Joint Comments of CTIA and WIA, WT Dkt. No. 17-79 (Jun. 15, 2017); Joint Reply Comments of CTIA and WIA, WT Dkt. No. 17-79 (July 17, 2017).

[142] *See, e.g.*, WIA Comments at 62-65; Washington State DOT Comments at 2-3; Comments of the Association of American Railroads, WT Dkt. No. 17-79, at 27-31 (Jun. 15, 2017) ("American Railroads Comments"); AT&T Comments at 35; Crown Castle Comments at 43; CTIA Comments at 37; ExteNet Comments at 47-48; Sprint Comments at 6-7; T-Mobile Comments at 57-60; Verizon Comments at 63-64.

[143] *See, e.g.*, WIA Comments at 64-65; AT&T Comments at 30-31; CTIA Comments at 36; ExteNet Comments at 47-48; Lightower Comments at 15.

process EAs and resolve environmental delays and disputes.[144] WIA urges the Commission to act expeditiously to take these suggested steps.[145]

EAs for floodplain sites. The record shows that floodplain EAs account for up to 95% of all EAs,[146] and, in some cases, may be "the biggest delay" facing wireless infrastructure deployment.[147] Yet, of the more than 700 such EAs filed by one association's members in the last three years, none resulted in an adverse effect finding.[148] Accordingly, where wireless support facilities are constructed at least one foot above the base flood elevation and local building permits have been obtained, the requirement to file an EA can be eliminated without any significant adverse consequences to the environment.[149] As Sprint noted:

> [T]he FCC process for 100-year flood plains is purely ministerial as the FCC defers entirely to other agencies or their designees. More specifically, approval of the Environmental Assessment because of a 100-year flood plain is always granted by the FCC if the applicant has obtained a local building permit, but the Environmental Assessment is nevertheless required.[150]

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[144] *See, e.g.*, WIA Comments at 65; T-Mobile Comments at 59-60.

[145] Two commenters oppose changes to the NEPA rules that would undermine "bird-safe lighting" or eliminate the need to assess the potential impacts on birds from tower construction. *See* Comments of Cape Cod Bird Club, Inc., WT Dkt. No. 17-79, at 1-2 (Jun. 6, 2017); Comments of Defenders of Wildlife, WT Dkt. No. 17-79, at 1-3 (filed Jun. 9, 2017) (filed as Mark N. Salvo). None of the proposed changes should impact either area.

[146] Crown Castle Comments at 43; *see* Verizon Comments at 63 (estimating that more than 80 percent of its EAs are filed due to floodplain issues).

[147] American Railroads Comments at 27; *see also id*. at iii (noting that the EA review process can add months to deployment timelines).

[148] *Id.* at ii, iii, 29-30; *see* T-Mobile Comments at 59; *see also* Crown Castle Comments at 43; Verizon Comments at 63-64.

[149] *See, e.g.*, WIA Comments at 62-65; American Railroads Comments at 27-31; AT&T Comments at 35; Crown Castle Comments at 43; CTIA Comments at 36-37; ExteNet Comments at 47-48; Sprint Comments at 6-7; T-Mobile Comments at 57-60; Verizon Comments at 63-64.

[150] Sprint Comments at 6-7; *see* ExteNet Comments at 47-48.

No party opposed eliminating this requirement and support for elimination was broad, including from the Washington State Department of Transportation.[151]

NEPA exclusion for small facilities. Unlike collocations, new and replacement support structures remain subject to full environmental review unless they meet certain size and excavation requirements and are located in communications or utility ROWs.[152] The record demonstrates the Commission can improve this exclusion by expanding it exclude all small wireless facility deployments on new or replacement poles, provided: (i) the new or replacement pole is no more than 10% or 20 feet taller or 20 feet wider than other existing nearby support structures, will not involve the installation of more than four new equipment cabinets/one new equipment shelter, and will not involve excavation outside the property surrounding the deployment; and (ii) the small wireless facilities will not exceed FCC RF limits.[153] These limitations will ensure that significant environmental concerns are not triggered and, at the same time, facilitate wireless infrastructure deployment.

Environmental review shot clocks. The record confirms the NEPA review process is costly and time-consuming.[154] Various commenters, including WIA, support adoption of shot clocks governing the EA review and environmental objection process.[155] No party opposed this proposal. Adoption of such shot clocks will ensure that environmental reviews, where necessary, are timely resolved.

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[151] Washington State DOT Comments at 2-3.

[152] *See* 47 C.F.R. § 1.1306(c).

[153] WIA Comments at 64-65; *see also* ExteNet Comments at 47-49 (discussing DNS support poles); T-Mobile Comments at 57-58 (discussing small wireless deployments on replacement poles).

[154] *See, e.g.*, WIA Comments at 65; T-Mobile Comments at 57-60; CTIA Comments at 35.

[155] *See* WIA Comments at 65; CCA Comments at 48; T-Mobile Comments at 59-60.

B. The FCC Should Further Streamline NHPA Reviews.

Numerous commenters support simplifying and expanding the existing NHPA categorical exclusions for pole replacements, facilities located in ROWs and industrial/commercial areas, and collocations.[156] Indeed, even the Advisory Council on Historic Preservation ("ACHP") has encouraged the FCC to explore what additional efficiencies it might consider to facilitate pole replacements, ROW deployments, collocations, and other 5G-related activities.[157] While WIA applauds efforts taken by SHPOs to act quickly to review non-excluded sites, it agrees new and simplified exclusions can lessen workloads and reduce costs for all involved while still protecting historic resources. As one SHPO explains, "the best way to achieve shorter review responses is to exclude more types of installations, such as some DAS networks on existing utility poles, from review."[158] Accordingly, consistent with the record, the Commission should pursue the following steps to expand and simplify the NHPA categorical exclusions.

Pole replacement exclusion. Like tower replacements, commenters support excluding pole replacements from Section 106 review regardless of location, provided certain size

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[156] *See* WIA Comments at 65-73; AT&T Comments at 31-32; CCA Comments at 43-45; Crown Castle Comments at 34-42; CTIA Comments at 36-39; ExteNet Comments at 48-49; Mobile Future Comments at 10; Comments of NCTA–The Rural Broadband Association, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 13-14 (Jun. 15, 2017) (NCTA Comments"); Samsung Comments at 9-10; Sprint Comments at 32-33; Comments of Starry, Inc., WT Dkt. No. 17-79, at 3-4 (Jun. 15, 2017) ("Starry Comments"); Verizon Comments at 53-62.

[157] *See* Comments of Advisory Council on Historic Preservation Comments, WT Dkt. No. 17-79, at 5-7 (Jun. 16, 2017) ("ACHP Comments").

[158] Comments of Rhode Island Historical Preservation & Heritage Commission, WT Dkt. No. 17-79, at 2 (May 30, 2017).

limitations are satisfied.[159] Expanding the exclusion in this manner will ensure that poles falling outside of the definition of a "tower" (and therefore outside the existing tower replacement exclusion) are afforded similar relief and can be used for wireless infrastructure deployment without unnecessary review.[160]

ROW exclusion. Various commenters urge the Commission to expand the existing NHPA exclusion for deployments in utility and communications ROWs to include all ROWs, including transportation ROWs.[161] Notably, the ACHP supports expanding the exclusion to include transportation ROWs.[162] The record also supports eliminating the need for Tribal review for ROW deployments if there is no new ground disturbance and the facilities would not be located on properties or districts identified as having Tribal significance.[163]

Industrial/commercial exclusion. Commenters agree the Commission should modify the industrial park/shopping center exclusion to narrow the scope of Tribal review.[164] Specifically, to ensure that Tribal historic properties are not affected, the Commission should eliminate the need for Tribal review where there is no new ground disturbance and the facility is not on Tribal land or a property or district identified in the National Register as having Tribal significance.[165]

Collocation exclusions. Various parties echoed the request of WIA to streamline the review of collocations under the NHPA by, *e.g.*, creating a prior local government review

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[159] WIA Comments at 66-67; CCA Comments at 43-44; Crown Castle Comments at 40-41; ExteNet Comments at 48-49; T-Mobile Comments at 60.

[160] *See* T-Mobile Comments at 61.

[161] *See, e.g.*, WIA Comments at 67-68; CCA Comments at 45; T-Mobile Comments at 62.

[162] ACHP Comments at 6.

[163] *See, e.g.*, WIA Comments at 68; T-Mobile Comments at 62.

[164] *See* WIA Comments at 72; Verizon Comments at 56-57.

[165] *See* WIA Comments at 72; Verizon Comments at 56.

exclusion, eliminating the historic district buffer zone, limiting the scope of Tribal review for collocations, simplifying the traffic light exclusion, streamlining small indoor deployments, addressing compound expansions, and clarifying the small cell volumetric limit.[166] For example:

Prior local review. Many parties support the Commission proposal to exclude collocations from Section 106 review if the proposed collocation has been reviewed and approved by a Certified Local Government, the collocation a Certificate of Appropriateness, or other similar formal approval from a local historic preservation review body.[167] As the City of New Orleans noted, this approach "appears to represent a fair compromise between appropriate review and over-review."[168]

Historic district buffer zone. The record includes support for eliminating the 250-foot buffer zone for collocations near but not in historic districts.[169] As WIA demonstrated in its comments, no rationale has ever been provided for the need for a bufferi zone.[170] At a minimum, the buffer should be reduced to no more than 50 feet.[171]

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[166] WIA Comments at 68-70; T-Mobile Comments at 62-63.

[167] *See, e.g.*, WIA Comments at 69; Crown Castle Comments at 42; ExteNet Comments at 49; Starry Comments at 3-4.

[168] New Orleans Comments at 9; *see* Maryland DOT Comments at 3 ("MDOT SHA supports those efforts within the federal government to review Section 106 requirements and minimize the potential of inter-governmental duplication."). *But see* ACHP Comments at 4; Comments of National Trust for Historic Preservation, WT Dkt. No. 17-79 & WT Dkt. No. 15-180, at 4 (Jun. 15, 2017).

[169] *See, e.g.*, WIA Comments at 69-70; T-Mobile Comments at 62-63.

[170] WIA Comments at 70.

[171] *See, e.g.*, *Wireless NPRM/NOI*, 32 FCC Rcd at 3355 ¶ 73; Crown Castle Comments at 41; CTIA Comments at 38; Mobile Future Comments at 10; Samsung Comments at 10; Verizon Comments at 57.

Tribal review of collocations. The record includes support for eliminating Tribal review of wireless collocations if the proposals would not require new ground disturbance and would not be located on Tribal land or a property or district identified in the National Register as having Tribal significance.[172] Indeed, as Verizon explains, "[o]f 8,100 requests for tribal review submitted between 2012 and 2015, there were *no* adverse effects from projects with no new ground disturbance."[173]

Traffic light exclusion. The Commission should simplify the NHPA exclusion for small wireless deployments on traffic control and lighting structures located in or near historic districts, which are currently excluded only case-by-case following SHPO review.[174] The Commission should simplify the process by eliminating the need for SHPO approval, replacing it instead with the requirement to use a qualified consultant to confirm that the structure is not a contributing element.[175]

Small indoor deployments. Commenters recognize the need to streamline the review process associated with small wireless indoor deployments.[176] In particular, the Commission should (i) clarify that, for small wireless indoor deployments, the volumetric limits in the Collocation Agreement do not include equipment located entirely within the interior of a building; and (ii) eliminate the need for Tribal review of such deployments if installed in structures not identified in the National Register as having Tribal significance. As CTIA notes,

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[172] *See Wireless NPRM/NOI*, 32 FCC Rcd at 3355-56 ¶ 74; *see, e.g.*, WIA Comments at 70; CCA Comments at 40; Crown Castle Comments at 40; T-Mobile Comments at 62; Verizon Comments at 46-47.

[173] Verizon Comments at 46.

[174] WIA Comments at 71-72; T-Mobile Comments at 61.

[175] *See* WIA Comments at 72; Crown Castle Comments at 41-42; T-Mobile Comments at 61.

[176] *See* WIA Comments at 70-71; CTIA Comments at 39.

"industry is increasingly locating facilities inside buildings to supply enhanced coverage and capacity," and this practice "should be encouraged, not discouraged."[177]

Compound expansions. The record supports conforming the excavation component of the "substantial increase in size" definition in the Collocation Agreement with the compound expansion component of the replacement tower exclusion in the 2004 NPA.[178] Thus, if a replacement tower can be constructed without triggering Section 106 even though excavation is required up to thirty feet outside of the original site, collocations should be treated similarly.[179] As Crown Castle explains, "[t]his reform will have a significant impact in reducing delays and expenses, as an estimated 95% of all Crown Castle's Section 106 reviews performed are triggered by fee or leasehold expansions."[180]

Volumetric limits. WIA agrees with AT&T that the Commission should clarify the small cell volumetric limit in the Collocation Agreement.[181] Currently, that agreement establishes an exclusion for placement of antennas that fit within a real or imaginary enclosure of three cubic feet in volume if the aggregate of all antennas fits within an enclosure of six cubic feet or less in volume and the associated equipment comprises a volumetric limit of 21 cubic feet or more,

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[177] CTIA Comments at 39.

[178] *See* WIA Comments at 72-73; Crown Castle Comments at 39. Pursuant to the replacement tower exclusion, excavation is permitted up to thirty feet outside of an existing tower site without triggering the need for Section 106 review. *See* Nationwide Programmatic Agreement Regarding the Section 106 NHPA Review Process, § III.B (2004), *codified as* 47 C.F.R. Part 1, App. C ("2004 NPA"). In contrast, the "substantial increase in size" definition is triggered for collocations on towers that require excavation anywhere outside of the tower site. *See* First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § I.E (2016), *codified as* 47 C.F.R. Pt. 1, App. B ("Collocation Agreement").

[179] WIA Comments at 73.

[180] Crown Castle Comments at 39.

[181] AT&T Comments at 30-31.

depending on the support structure.[182] The Commission should clarify that this categorical exclusion would allow for the combination of small cell antennas (and potentially associated equipment) in a single shroud that does not exceed the six cubic feet in volume limit.[183]

V. COMMENTERS SUPPORT ADDITIONAL REFINEMENTS TO STREAMLINE DEPLOYMENT OF POLE ATTACHMENTS.

Pole attachment policies and procedures will continue to be important as providers seek to deploy and upgrade both wireline and wireless broadband. As such, the Commission should consider additional refinements to the make-ready process and should implement a shot clock for pole attachment dispute resolution.

The record supports efforts to speed and streamline the make-ready process, including encouraging "one-touch" make-ready with conditions to protect the pole owner and other attachers.[184] Moreover, Crown Castle explains in its comments the difficulty of obtaining activated electrical service as part of the make-ready process, which adds delay in brining new attachments online and slows the delivery of broadband to consumers; the Commission should therefore consider electrical power activation of attachments as part of the necessary make-ready work to be completed in the requisite time frame.[185] These and other improvements to the make-ready process will ensure the facilities necessary for next-generation networks can be timely deployed.

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[182] *Id.*

[183] *Id.*

[184] *See, e.g.*, Crown Castle Comments at 24; Verizon Comments at 4-8; AT&T Comments at 14-18; Lightower Comments at 4; Comments of Google Fiber Inc., WC Dkt. No. 17-84, at 5-17 (Jun. 15, 2017).

[185] *See* Crown Castle Comments at 21-22.

The record also supports establishment of a pole attachment shot clock requiring the Enforcement Bureau to act on pole access complaints within no more than 180 days.[186] Absent a shot clock, the complaint process can drag out and impose substantial costs on the complainant. As one commenter notes, the current process "'dares' the entity seeking to attach to bring an enforcement action, knowing that it is costly to pursue a complaint and virtually impossible to have it resolved in a timely fashion."[187] Establishment of a shot clock will ensure timely resolution of complaints and therefore expedite the wireless siting process.

[186] *See, e.g.*, WIA Comments at 73-74; Comments of Ameren Corporation, WC Dkt. No. 17-84, at 58 (June 15, 2017); Comments of the American Cable Association Comments, WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 27, 51-53 (June 15, 2017) ("ACA Comments"); AT&T Comments at 25-26; Comments of CenturyLink, WC Dkt. No. 17-84, at 22 (Jun. 15, 2017); Comments of Fiber Broadband Association, WC Dkt. No. 17-84, at 4 (Jun. 15, 2017) ("Fiber Broadband Comments"); Comments of Frontier Communications Corporation, WC Dkt. No. 17-84, at 14 (Jun. 15, 2017); NCTA Comments at 9-10; Comments of the USTelecom Association, WC Dkt. No. 17-84, at 19-20 (Jun. 15, 2017); Comments of Verizon, WC Dkt. No. 17-84, at 15-16 (Jun. 15, 2017).

[187] Fiber Broadband Comments at 4; *see* ACA Comments at 27, 51-52.

CONCLUSION

The deployment of wireless networks and services is essential to America's present and future economy. By acting now to take the steps recommended herein and in WIA's initial comments, the Commission can remove barriers to wireless infrastructure deployment and ensure that American consumers reap the benefits of 5G and future wireless technologies.

Respectfully submitted,

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July 17, 2017